IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

Crl.Rev.Pet.No. 462 of 2000()

CRA.308/1996 of ADDL.SESSIONS COURT, THALASSERY
CC.278/1995 of JUDL.MAGISTRATE OF FIRST CLASS COURT, KUTHUPARAMBA

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REVN. PETITIONER: APPELLANT/1ST ACCUSED

NELLERI ANEESH
S/O.GOVINDAN
THOLEMBRA AMSOM PAZHASSI DESOM
KANNUR DISTRICT.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.R.P.462/2000

ORDER ON CRL.M.P.NO.2648/2000 IN CRL.R.P.NO.462/2000

DISMISSED

29.3.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

CRL.R.P.No.462 of 2000

Dated this the 29th day of March, 2007

O R D E R

The revision petitioner stands convicted for the offence under Section 55(a) of the Abkari Act and sentenced to undergo R.I. for two years and to pay a fine of Rs.5,000/- and in default, to undergo R.I. for nine months.

2. The prosecution case is that both the accused were found jointly transporting 305 litres of illicit arrack in the jeep bearing registration No.KLQ 6220 along the public road in the midnight on 27.8.1994. They did not stop the vehicle when the excise officials signalled to stop. The excise officials chased the vehicle in another vehicle and after proceeding to a certain extend, the accused stopped the jeep and ran away in the darkness. Out of the officials who followed the jeep, PWs' 3 and 5 were examined. But both of them have testified that at the time they could not identified the accused. The evidence with respect to the identification relied on is the confession statement of A1 and the version of PW4, the member of the prohibition

committee of the area who is on the look out for illicit distillation and distributors. His evidence is that he had seen the revision petitioners/A1 and A2 loading plastic containers in the jeep in the morning. It is pointed out that his evidence cannot be exclusively relied on as he rendered Ext.P4 statement to the police after three days at his own instance. The conviction is mainly based on the confession statement of A1 and the statement of PW4 i.e, Ext. P5 statement.

3. The counsel for the revision petitioner has contended that marking of the statement of the witnesses and placing in reliance of the confession statement of the accused are not permissible. The counsel has relied on the decision in Rajaram vs. State of Bihar (1964 SC 828) wherein the Supreme Court has held specifically that the confession statement of the accused recorded by the excise officials would be hit by Section 25 of the Evidence Act as they are in vested with the investigative powers. The statement of witnesses can only be treated as statement recorded under Section 161 of Crl.P.C. which can be used only to contradict the witnesses. In the circumstances, I find that the reliance placed by the court on the above evidence has resulted

in gross prejudice to the accused. Hence, it cannot be held that the offence alleged has been proved beyond reasonable doubt. Hence, the conviction and sentence imposed by the courts below is set aside. Revision petitioner is acquitted.

The criminal revision petition is allowed.

K.R.UDAYABHANU,
JUDGE

csl